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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/583,963

03/21/2007

Engelbert Ecker

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EXAMINER

PARRIES, DRU M

ART UNIT

PAPER NUMBER

2836

NOTIFICATION DATE

DELIVERY MODE

03/24/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/583,963	<b>Applicant(s)</b> ECKER ET AL.	
	<b>Examiner</b> DRU M. PARRIES	<b>Art Unit</b> 2836	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-10 and 14-18 is/are rejected.
- 7) ☒ Claim(s) 4-6 and 11-13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3-21-07</u> . | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Information Disclosure Statement***

The foreign references listed on the IDS, which are crossed out, were not acknowledged by the Examiner because they were in a foreign language and an English equivalent summary was not provided.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 17 and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This claim has improper "means plus function" recitation, as it sets forth a means but no function. The specification does not give an explicit description to allow the Examiner to understand the scope of this claim.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 4, 8, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, the phrase "in particular" is used in these claims followed by a narrower statement than what was recited before the above phrase.

### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 17 and 18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed toward a computer program per se. As it states in MPEP 2106.01, a computer program is non-statutory subject matter because it does not define any structural and functional interrelationship between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized.

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***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 9, 10, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris (5,883,802) and Kiefer et al. (4,213,313). Regarding independent claims 1 and 10, Harris teaches a dishwasher comprising a) a group of  $n$  electrical load elements (24, 26, 28, soap dispenser (not shown)) being assigned a maximum electrical total power  $p_{\max}$ ; b) each electrical load element  $i$  in the group of  $n$  elements is assigned at least 2 discrete power levels (wherein the highest of which is the maximum power level); where the sum of all maximum power levels of each element forms a worst total power which is greater than the group assigned maximum  $p_{\max}$ , and where a regular power level exists for each  $i$  (when in cycle, the loads are maintained at or below the limit,  $p_{\max}$ ); c) an optimum combination of power levels is selected in a demand determination step (after the cycle is selected), as a function of an operating state B of the dishwasher, where the sum of the selected power levels for each load element in the selected operating state is below or equal to  $p_{\max}$ . (Col. 3, lines 16-21, 34-38; Col. 4, lines 22-40)

Harris fails to explicitly teach the maximum power level being assigned to at least one load element during a particular operating state. Kiefer teaches a similar dishwasher system comprising an operating state (hot water wash cycle) wherein the heating element is assigned a maximum power level (Col. 2, lines 56-63). Kiefer also teaches in a different operating state (dry cycle) the heating element being assigned a lower power level (Col. 3, lines 8-12). It would

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have been obvious to one of ordinary skill in the art at the time of the invention to have the heating element in Harris' invention to be assigned the maximum power level during the hot water wash cycle, so that the water can get hot as quickly as possible to be able to clean the dishes more effectively.

Regarding claims 2 and 3, Harris teaches a power level  $p_{ik}$  existing for each electrical load, where  $p_{ik}=0$  (i.e. when the dishwasher is turned off). Along with the maximum power level and regular power level, there are 3 discrete power levels for the load elements.

Regarding claim 9, Harris teaches the operating states being characterized by an operating phase variable assuming at least three discrete values, wherein the first value denotes the starting phase (the selecting of a cycle while the dishwasher is off), the second denotes a switched-on phase (once the cycle is selected, switching on the necessary load elements), and the third denotes the load regulation phase (while the cycle is running, maintaining the total power level below  $p_{max}$ ).

Regarding claims 16-18, Harris teaches a look-up table to assign power levels for each of the load elements (Col. 3, lines 38-50). Harris also teaches having program code carried out on a computer (Col. 3, lines 16-21). Part of the program code is stored in the look-up table (i.e. computer-legible data storage medium).

8. Claims 7, 8, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris (5,883,802) and Kiefer et al. (4,213,313) as applied to claim 1 above, and further in view of Wilmot (4,695,738). Harris and Kiefer teach a dishwashing system as described above. They fail to explicitly teach the use of priority when determining load power levels. Wilmot teaches the idea of allocating a priority to each load element in an appliance to help determine the

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optimum combination of power levels. Wilmot also teaches shedding the least necessary loads first. (Col. 1, lines 12-25) It would have been obvious to one of ordinary skill in the art at the time of the invention to implement Wilmot's priority idea into Harris' invention to minimize unnecessary power consumption. It also would have been obvious to have the heating elements in Harris' invention being allocated to a higher priority than other loads, since they are the most necessary when it comes to washing dishes.

9. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harris (5,883,802) and Kiefer et al. (4,213,313) as applied to claim 1 above, and further in view of Eberhardt, Jr. et al. (4,689,089). Harris and Kiefer teach a dishwashing system as described above. They fail to explicitly teach the use of multiple tanks in the dishwasher. Eberhardt teaches a dishwasher having multiple tanks (28, 48, 68). It would have been obvious to one of ordinary skill in the art at the time of the invention to implement the dishwasher as a three tank washing machine, to be able to wash more dishes faster.

***Allowable Subject Matter***

10. Claims 4-6 and 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for indicating allowable subject matter: the references of record, either alone, or in combination, do not teach or suggest at least the limitations of: Claims 4 and 11, particularly letter h). Claims 5-6 and 12-13 are dependent upon claims 4 and 11, respectively.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dru M. Parries whose telephone number is (571) 272-8542. The examiner can normally be reached on Monday -Thursday from 9:00am to 6:00pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jared Fureman, can be reached on 571-272-2391. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DMP

3-9-2010

/Fritz M Fleming/

Primary Examiner, Art Unit 2836